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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,446	04/20/2004	Kazumi Minoguchi	0051-0226PUS1	2718

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BIRCH STEWART KOLASCH & BIRCH  
PO BOX 747  
FALLS CHURCH, VA 22040-0747

EXAMINER
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SEVERSON, RYAN J

ART UNIT	PAPER NUMBER
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3731

NOTIFICATION DATE	DELIVERY MODE
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07/26/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/827,446	<b>Applicant(s)</b> MINOGUCHI ET AL.	
	<b>Examiner</b> Ryan J. Severson	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-10 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-10 and 19 is/are allowed.
- 6) ☒ Claim(s) 18 is/are rejected.
- 7) ☒ Claim(s) 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/3/2010 has been entered.

### ***Claim Objections***

2. Claim 17 is objected to because it is dependent on a cancelled claim. Since it is unclear what claim applicant intends the claim to depend from, it has not been further treated on the merits.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakata et al. (GB 2 288 126 A).** Nakata et al. disclose an apparatus for a teething infant comprising an annular plate shaped first tooth-hardening member (42) having a top surface with projections (on either side of section 45, see figure 6) and plate shaped second tooth-hardening members (43 and 44) having a top surface with a plurality of

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projections (see figure 5). The second tooth-hardening members are arranged at an outer peripheral edge of the first tooth-hardening member (see figure 5). The second tooth-hardening members have top and bottom surfaces with differing hardnesses (see page 8, lines 32-34 where both surfaces are rubber). The first tooth-hardening member (grip portion) is made from a hard resin (see page 4, lines 24 and 25). Therefore, the top surface of the first member is harder than the top surface of the second member (because the resin is a hard plastic, which is harder than rubber). However, the embodiment shown in figure 5 as disclosed by Nakata et al. fails to explicitly disclose the second member is oval shaped. Attention is drawn to page 3, line 17 of Nakata et al., which teaches having a teething portion (analogous to the second members of figure 5) that is oval shaped. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have shaped the second members of the embodiment shown in figure 5 of Nakata et al. in an oval shape in the manner taught by the embodiment described at page 3, line 17.

5. Further, it has been held that absent persuasive evidence that the particular configuration of the claimed second tooth-hardening members is significant, a person of ordinary skill in the art would have found it obvious to shape the prior art second tooth-hardening members in the claimed shape/configuration. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)

### ***Response to Arguments***

6. Applicant's arguments with respect to claim 18 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

7. Claims 6-10 and 19 are allowed.
8. The following is a statement of reasons for the indication of allowable subject matter: The prior art does not disclose or suggest a tooth-hardening apparatus having a first plate shaped tooth-hardening member and a second plate shaped tooth-hardening member arranged at the periphery of the first member where each of the first and second members have upper and lower surfaces formed from different hardnesses and further where the harder surface of the first member is harder than the harder surface of the second member.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan J. Severson whose telephone number is (571) 272-3142. The examiner can normally be reached on Monday - Friday 8:30-5:00.
10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan J Severson/  
Examiner, Art Unit 3731  
7/5/10